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TWO YEARS' EXPERIENCE OF THE NEW YORK STATE BOARD OF LAW EXAMINERS.[1]

THE invitation which so kindly was extended to me to prepare this paper was accepted with much hesitation, and principally because of our Secretary's assurance that the experience of the New York State Board of Law Examiners, short though it has been, might be of use to the profession in other States.

"Justice, Sir," said Webster, "is the great interest of man on earth."

At Lincoln's Inn Hall, on October 28, 1895, at the opening of the course of lectures under the Council of Legal Education, the subject of the address included the requirements for admission to the bar both in England and the United States, and the speaker was the Lord Chief Justice of England.[2]

It is a high duty that rests upon the State to see to it that, in the administration of justice, none but men of learning and character shall be permitted to bear a part, and among the true leaders of the bar there has ever been that "chastity of honor which felt a stain like a wound."

[1] A paper read at Saratoga, August 21, 1896, before the Section on Legal Education of the American Bar Association.

[2] The Law Times, vol. 100, p. 16.

In some States of the Union the profession has had to struggle with a popular delusion that no general or professional education should be required of any one before his admission to the bar.

There is, probably, no State in which the examination for admission to the bar is more thorough to-day than it is in New Hampshire. In a letter, however, which Mr. Chief Justice Carpenter, of that State, has been kind enough to write to me upon the subject of admission to the bar, he recites the fact that from 1842 to 1872 it was provided by Statute as follows: "*Any* citizen of the age of twenty-one years, of good moral character, on application to the Supreme Court, *shall* be admitted to practise as an attorney." "The result of this system," writes the Chief Justice, "was to introduce into the bar many persons ignorant of elemental legal principles, uninstructed in professional duty, and wholly unworthy of their trust. Many such persons have been removed from office by the Court, for unprofessional conduct, due, in a majority of cases, to ignorance of their duty, rather than to a wilful misdoing."

It was not until 1878 that the Supreme Court of New Hampshire adopted the system of examinations, which has prevailed to the present time, and which, in its important features, is the same as that which, since January, 1895, has existed in New York. It is accordingly with great pleasure that I am permitted to quote Mr. Chief Justice Carpenter on the effect of the change. He writes: "The effect of the system has been highly salutary. The expectation of the Court in adopting the system has been fully realized. The professional standing of the younger members of the bar, of those admitted since 1878, as a class, is vastly higher than was that of the young men admitted before that time. As a necessary consequence," the Chief Justice continues, "the bar, as a whole, is constantly increasing in strength and influence and in the confidence of the public. The system operates to the great satisfaction of the bar, and now, I think, to that of the people generally, some of whom were, at first, disposed to condemn it, and sought to abolish it by legislative action."

The conditions that prevailed in New York before the passage of the act under which the present Board was appointed; the object which the Legislature had in view in passing the act; the work which the Board has done, and the results which thus far have been obtained, are the topics to which this paper will be devoted.

In September, 1876, in a paper read at a meeting of the American Social Science Association held at Saratoga, Mr. Lewis L. Delafield, in describing the condition of legal education and admission to the bar in New York, said: —

"Unhappily the law gave to the three principal schools the pernicious privilege of having their graduates admitted to the bar upon presentation of the school diploma, and without the public examination in open court, required by the rules. The charters of the schools varied greatly; the graduates of the Hamilton Law School might be admitted whenever they could pass an examination in the school, without reference to the time of their studies; the Albany and University schools might admit in thirty-six weeks, and the Columbia School in eighteen months, without any public examination. The difference and the privilege were alike unreasonable. This partial legislation naturally led to evasion. The Columbia College School construed the eighteen months required by the Statute as meaning academic months, and thus reduced the term to fifteen statute months. In the competition which ensued, all conditions of fitness were overlooked, no preliminary examinations were required, the school catalogues announced that no examinations and no particular course of previous study were necessary for admission. In all the schools the professors themselves conducted the examinations for admission to the bar. Thus, the singular spectacle was presented of first inviting all, however unfitted, to study law, and then admitting them to practice upon the report of their instructors."[1]

During several years after 1876, when the Court of Appeals of New York adopted rules requiring a public examination of applicants for admission to the bar, the Legislature passed acts exempting graduates of New York law schools from the necessity of taking such an examination.

For many years before 1894 the General Term of the Supreme Court in each of the five Judicial Departments had been in the habit of appointing from the bar a committee, which usually consisted of three members, to conduct examinations for admission to the bar. In some departments there were both oral and written examinations, while in at least one department there was no written examination and the oral examination did not deserve the name. In that department the efforts of the bar to raise the standard of examinations, or, rather, to create some standard, met with continued and stubborn opposition by the Presiding Justice of

[1] Penn. Monthly for 1876, vol. 7, p. 960.

the General Term. On the other hand, no complete history of the progress of the efforts to establish thorough examinations for admission to the bar will admit an acknowledgment of the debt that the community owes to the Presiding Justice of the Appellate Division of the Supreme Court in the First Judicial Department. Other judges throughout the State have given their influence to the same end, but the very fact that, of the applicants for admission to the bar, probably more than half the entire number applied in the city of New York, made the attitude of the Presiding Justice in the First Department of controlling importance.

A history of the struggle out of which has come the present system would be interesting, but my principal object is to give a statement of the system, the methods which the Board of Law Examiners has adopted, and the results that, thus far, have been obtained.

The system, which owes its existence largely to the untiring efforts of the New York State Bar Association, was made possible by an act of the Legislature (Chap. 760, Laws of 1894) which authorized the Court of Appeals to appoint a State Board of Law Examiners, to consist of three members. The term of office was fixed at three years, and the court was authorized to fix the compensation of the members, such compensation to be paid out of a fund to arise from the payment made by each applicant of the sum of fifteen dollars, entitling the applicant to three examinations if necessary. In October, 1894, the Court of Appeals appointed William P. Goodelle, of Syracuse, ex-Judge Franklin M. Danaher, of Albany, and the writer of this paper.

In order to entitle an applicant to an examination he must prove by his affidavit that he is a citizen of the United States, a resident of New York, twenty-one years of age, and that he has studied law three years, "except that if the applicant be a graduate of any college or university his period of study may be two years instead of three." — Rule IV.

The course of study must be followed after the age of eighteen years, and may consist of serving a clerkship in an office, or in attendance at "an incorporated law school, or a law school connected with an incorporated college or university, having a law department organized with competent instructors and professors, in which instruction is regularly given," or in part by attendance at such law school, and in part by serving such clerkship. — Rule V. Subdivision 1.

If the applicant be a college graduate, he must have pursued his study of law after graduation.

"Applicants who are not graduates of a college or university shall, before entering upon the clerkship or attendance at a law school, or within one year thereafter, have passed an examination, conducted under the authority and in accordance with the ordinances and rules of the University of the State of New York, in English Composition, Advanced English, first year Latin, Arithmetic, Algebra, Geometry, Civics, and Economics, or in their substantial equivalents as defined by the rules of the University." — Rule V. Subdivision 3.

By this rule the Regents of the University are permitted to accept as an equivalent either a Regent's Diploma or a certificate that the applicant has completed successfully a full year's course of study in a college or university, or that he has completed satisfactorily a three years' course of study in any institution registered by the Regents as maintaining a satisfactory academic standard. The attendance in a law school must have been for two entire school years of not less than eight months each. In computing the period of clerkship in an office a vacation actually taken, not exceeding two months, is allowed as part of the year.

The rules provide for admission to the bar in New York, on motion, of any person who has been admitted to the bar in another State and practises there in the highest court of law, or "who, being an American citizen and domiciled in a foreign country, has received such diploma or degree therein as would have entitled him, if a citizen of such foreign country, to practise law in its courts." Persons who have been admitted to the bar in another State, and remained therein as practising attorneys for at least one year, may be entitled to the examination after a period of law study of one year within this State.

The object of the Legislature was to establish a high and uniform standard for admission to the bar; and to secure that object the members of the State Board of Law Examiners have given their best thought and much labor, realizing that the success of the new system must depend largely on the manner in which it should be administered.

The task of one who examines applicants for admission to the bar may differ from that of the professor who examines his students on the work they have done. The examiner for ad-

mission to the bar deals with the results of legal education obtained under the instruction of others. His duty is to ascertain whether the applicant is qualified to advise clients. But a client needs advice as to his legal rights or obligations, in his particular case, that is, on the facts that he presents to his adviser.

The examination for admission to the bar ought, therefore, to test the ability of an applicant to apply the principles of the law to given facts. A readiness in giving definitions and repeating rules of law is quite consistent with utter incapacity to apply the doctrines of law or equity to the simplest case. An applicant, who repeated with accuracy the Latin names of the different kinds of bailment, showed, by his answer to a question based on given facts, that he could not distinguish a bailment from a sale.

From the beginning of our work as examiners, we have adopted the plan of putting questions that require the applicants to show whether or not they know what principles of law are involved in the solution of given problems, and have selected such problems as might naturally be presented to a lawyer for his solution. It is true that this plan of examination differs from that which, for many years, had existed in some of the Judicial Departments of this State, and from that which now exists in many other States; it is not, however, new.

A few weeks ago I read the following account of the method of examination which was applied by the late Charles O'Conor. "Mr. O'Conor stated certain facts and asked the one at the head of the class what legal proceedings he would take if applied to in such a case." Our plan of examination is identical with that adopted by Mr. O'Conor.

During the first year we retained the oral, in addition to the written, examination. Failure, however, to pass the written examination was followed, almost invariably, by the display of further ignorance on the oral examination. Even when that did not happen, correct answers to the few questions that the necessary limits of an oral examination permitted, did not cure the ignorance which the written answers had disclosed.

Cleverness and fluency might enable some to make a good impression, but could not be accepted as substitutes for knowledge of the law. Unless each applicant can be examined separately and apart from the others, and examined at leisure, as is done in some

of the German universities, an oral examination precludes anything like even a pretence of uniformity. But it was uniformity of standard that the Board was expected to establish. Finally, oral examinations become impracticable when between four and five hundred applicants present themselves at one examination.

I have endeavored to show briefly how we have construed our duty, and the methods that we have employed.

The results of the work which the State Board thus far has performed are plain and important. I take pleasure in giving the statistics, realizing that they are not broad enough yet to furnish a safe basis for inferences.

The State Board held its first examination in January, 1895.

The number of applications received to June, 1896, is 1118.

The number of applicants examined is 1051.

The number of applicants who were graduates of colleges or universities, 433.

The number of applicants who were not graduates of colleges or universities, 652. This number includes 28 whose records of preliminary study are incomplete, and who are included in this class because they are not *shown* to be graduates.

The number of applicants who had been admitted to the bar in other States, 33.

The graduates of colleges and universities came from sixty-nine different institutions. Taking the colleges or universities that sent more than nine applicants apiece, in the order of the number of applicants, except that Harvard and Princeton sent the same number, they are as follows: Yale, College of the City of New York, Harvard, Princeton, Columbia, Cornell, Hamilton, Amherst, University of the City of New York, and Williams.

Of the 433 graduates of colleges or universities, 65 had only office experience, 83 had both law school and office experience, while 285 had only law school experience.

Of the 652 applicants who were not graduates of a college or university, 192 had had only office experience, 349 had both law school and office experience, while 83 had only law school experience. As has been said, there is no record of 28.

Of the 1050 examined, 793 had had training in a law school, while 257 had had only experience in an office.

Of the 793 who had attended law schools, 116, or about 14 per cent, failed to pass one or more times.

Of the 257 who had not attended a law school, 68, or about 26 per cent, failed to pass one or more times.

Of the 433 who were graduates of colleges or universities, 51, or about 11 per cent, failed to pass one or more times.

Of the 65 college graduates who had had only office experience, 16, or about 24 per cent, failed to pass one or more times.

Of the 83 college graduates who had both law school and office experience, 11, or about 13 per cent, failed to pass one or more times.

Of the 285 college graduates who had only law school experience, 24, or about 8 per cent, failed to pass one or more times.

Of the 652 who were not college graduates, 133, or about 20 per cent, failed to pass one or more times.

Of the 192 who had attended neither college nor a law school, 51, or over 26 per cent, failed to pass one or more times.

Of 349 who had no college education, but who had both law school and office experience, 72, or over 20 per cent, failed to pass one or more times.

Of the 83 who had no college education, and had attended a law school but not an office, 10, or over 12 per cent, failed to pass one or more times.

The Board has examined 14 women and admitted 12.

Of the 1118 who have applied for examination, there are 85 who are entitled to another examination. The provision that entitles an applicant to three examinations, without further fee, operates favorably. The applicant who fails to pass the first time looks upon his failure not as a rejection, but only as a postponement and an incentive to do better work.

The work that the State Board has done is not primarily educational. The steady adherence to its purpose to maintain a high standard for admission to the bar has, however, strengthened the hands of instructors of the law. It is unhappily true that, ordinarily, the question that the student asks is, What is the least amount of preparation that will enable me to pass the examination for admission to the bar? Thus the requirements of the State Board become of direct assistance to the cause of legal education.

In one respect the rules of the Court of Appeals ought, I think, to be changed. The rule allows an applicant to count one year's study of law *before* he has taken his Regents' examination. The requirements of that examination are not very severe, and the applicant ought not, I think, to be allowed to count any time that

he has spent in the study of the law before he has passed the Regents' examinations.

Upon another point there can be no doubt. There should be only one set of questions presented for the entire State at a given term of court. The New York Statute requires the Board of Law Examiners to hold two examinations each year in each Judicial Department. As there are four departments, the three examiners are obliged to present one examination paper in New York and Brooklyn, and on another day a different paper in Rochester and Albany. An amendment that will permit the Board to hold the examination for both the First and Second Departments either in New York or Brooklyn is essential to uniformity of standard.

A knowledge of the legal, political, and to-day one is inclined to add the financial, history of his country, as well as of its common and statute law, should be required of every one who seeks admission to the bar.

At an address delivered at the annual meeting of the Chicago bar on July 16, 1896, Mr. Charles H. Aldrich, after describing the distress that existed in the country at the close of the Revolutionary War and the jealousy that then divided the States, called attention to the fact that at that time there came into existence and power a large and violent party who proclaimed that the prosperity of the country lay in issuing unlimited irredeemable paper money, and in proscribing the lawyers.

Mr. Aldrich's statement receives apt illustration in the following extract from the "Letters of an American Farmer," written in 1782: —

"Lawyers . . . are plants that will grow in any soil that is cultivated by the hands of others, and, when once they have taken root, they will extinguish every vegetable that grows about them. The fortunes they daily acquire in every province from the misfortunes of their fellow citizens are surprising. The most ignorant, the most bungling member of that profession, will, if placed in the most obscure part of the country, promote litigiousness, and amass more wealth without labor than the most opulent farmer with all his toils. They have so dexterously interwoven their doctrines and quirks with the laws of the land, or rather they are become so necessary an evil in our present Constitution, that it seems unavoidable and past all remedy. What a pity that our forefathers, who happily extinguished so many fatal customs, and expunged from their new government so many errors and abuses, both religious and civil, did not also prevent the introduction of a set of men so dangerous! . . .

The nature of our laws, and the spirit of freedom, which often tends to make us litigious, must necessarily throw the greatest part of the property of the colonies into the hands of these gentlemen. In another century the law will possess in the North what now the Church possesses in Peru and Mexico."[1]

The control and direction of public affairs have, however, remained largely with the members of the bar, and though the present assault on the Nation's life and honor may find its leader in a lawyer, he will not count among his followers those who have trained their minds truly and sternly in the great principles of ethics that find expression in the controlling doctrines of equity and the common law.

Rather will the bar cling to the memory of that young graduate of Harvard, who, dying under forty, an honored member of our profession, had been Mayor of his native city of Cambridge, and Governor of the Commonwealth of Massachusetts, and at whose funeral were quoted his own words: "Truth never lay in compromise, nor success in evasion of responsibility. Let us find the truth, bravely assert it, and trust the cause to conscience and patriotism."

To aid in an effort to elevate the bar and thus increase its influence and power for good is, indeed, to promote the general welfare. If it be true that every one owes a debt to his profession, here is one way of discharging honorably the obligation.

Austen G. Fox,
Member of the New York State Board of Law Examiners.

[1] Letters of James Russell Lowell, Vol. II. pp. 30, 31.